

Raising Capital Under the Post-JOBS Act Framework

ALI CLE Presentation
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U.S. Securities and Exchange Commission
**Office of the Advocate for
Small Business Capital Formation**

Roadmap

-  INTRODUCTION TO OUR OFFICE
-  NAVIGATING REGULATORY PATHWAYS
-  NONCOMPLIANCE RISKS
-  OPEN-BOOK EXAM: FINDING RESOURCES





INTRODUCTION TO OUR OFFICE





Office of the Advocate for Small Business Capital Formation



Mission: Champion pragmatic solutions so small businesses—from startups to smaller public companies—and their investors can build great companies together using our capital markets.



Special Focus: Identify and address unique capital raising challenges faced by minority-owned, women-owned, rural, and natural disaster-affected small businesses and their investors.





Office of the Advocate for Small Business Capital Formation



How?

- Education and outreach
- Review rules and regulations
- Recommend policy changes to Congress and the Commission





NAVIGATING REGULATORY PATHWAYS



Securities Laws in a Nutshell

Under the federal securities laws, every **offer** or **sale** of securities, must be registered with the SEC or conducted under an exemption from registration

Registered Public Offerings

- Initial public offerings (IPOs)
- Special Purpose Acquisition Companies
- Direct Listings
- Secondary registered offerings

OR

- Rule 506(b) Private Placements
- Rule 506(c) General Solicitation Offerings
- Rule 504 Limited Offerings
- Regulation Crowdfunding Offerings
- Intrastate Offerings
- Regulation A Offerings

Exempt Offerings



Pathways to Capital Raising



[Rule 506\(b\) Private Placements](#) allow companies to raise unlimited capital from investors with whom the company has a relationship and who meet certain wealth thresholds or have certain professional credentials. A company cannot use general solicitation in a 506(b) private placement.



[Rule 506\(c\) General Solicitation Offerings](#) allow companies to raise unlimited capital by broadly soliciting investors who meet certain wealth thresholds or have certain professional credentials.



[Rule 504 Limited Offerings](#) allow companies to raise up to \$10 million in a 12-month period, in many cases from investors with whom the company has a relationship.

Pathways to Capital Raising



Regulation Crowdfunding Offerings allow eligible companies to raise up to \$5 million in a 12-month period from investors online via a registered funding portal.



Intrastate Offerings allow companies to raise capital within a single state according to state law. Many states limit the offering to between \$1 million to \$5 million in a 12-month period.



Regulation A Offerings (sometimes called a “mini-IPO”) allow eligible companies to raise up to \$20 million in a 12-month period in a Tier 1 offering and up to \$75 million in a 12-month period in a Tier 2 offering through a process similar to, but less extensive than, a registered offering.



Initial public offerings (IPOs) provide an initial pathway for companies to raise unlimited capital from the general public through a registered offering. After its IPO, the company will be a public company with ongoing public reporting requirements.

General Solicitation: What's the deal?

A solicitation that conditions the market for an offering of securities is generally viewed as a [general solicitation](#) that is marketing the securities. Examples:



Newspaper and
magazine
advertisements



Unrestricted public
websites



Television and radio
broadcasts



Seminars (excluding
demo days)

Why does this matter? Depending which regulatory pathway a company chooses to raise capital, the company may be limited in how it can connect with potential investors. For example, the most commonly used offering exemption under the federal securities laws — Rule 506(b) of Regulation D — prohibits the use of general solicitation to market the securities.

How can I avoid general solicitation?

Conduct an offering that is limited to investors with whom the company (or its broker dealer or investment adviser) has a **pre-existing, substantive** relationship.

"Pre-existing"

Formed *before* the start of the offering

or

Established through a broker-dealer or investment adviser *prior to* that investment professional's participation in the offering

"Substantive"

Formed when the entity offering securities (i.e., the company or its broker-dealer or investment adviser) has sufficient information to evaluate and evaluates a potential investor's status as an accredited investor



What about demo days?

Companies may pitch to potential investors at **qualifying demo** day events without being considered a general solicitation if they meet certain requirements.

Key criteria include:

- **Event sponsor** is a college, university, state or local government, nonprofit organization, angel investor group, incubator, or accelerator
- Sponsor is limited in its **role** outside of serving as the event host
- **Advertising** for the event does not reference any particular securities offering
- **Information** about the offering shared during the event is limited to notification of planned or ongoing offering, type and amount of securities being offered, intended use of the proceeds, and unsubscribed amount
- **Virtual Events** have additional restrictions on attendees



Choosing the Right Pathway

Make a plan.

AMOUNT NEEDED

What amount of money do you plan to raise?

WHAT



HOW



CONNECTIONS

How do you plan to connect with potential investors?

LOCATION

Where are your potential investors located?

WHERE



WHO



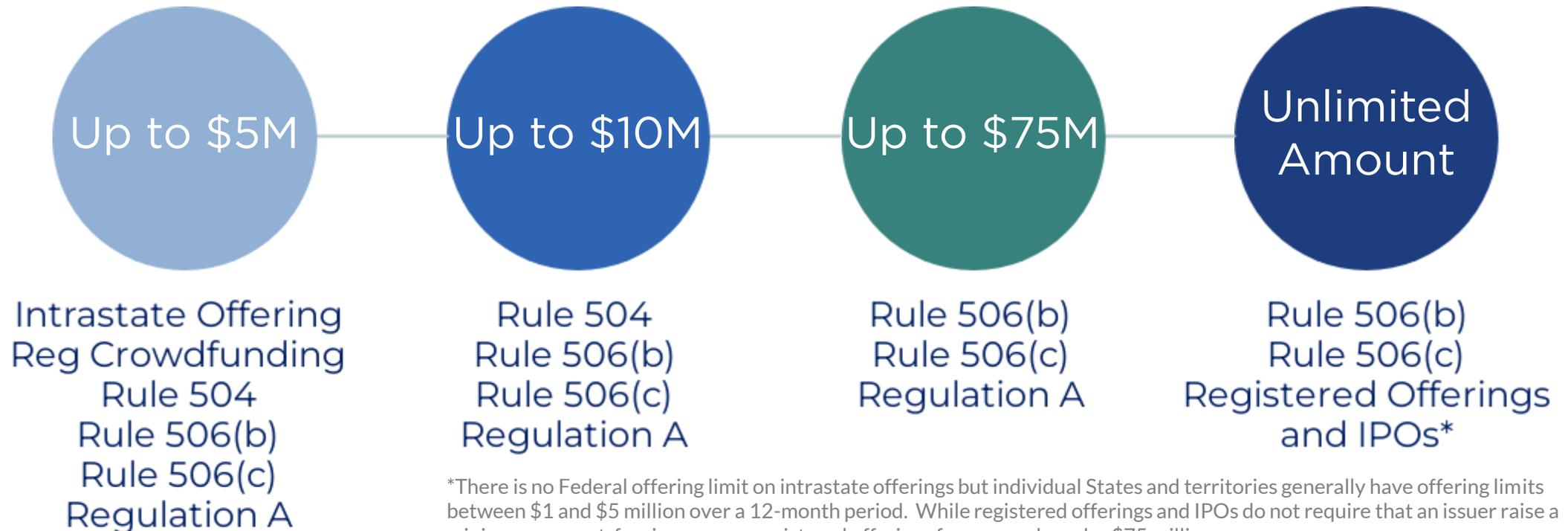
ACCREDITED STATUS

Are your investors all accredited?



What amount of money do you plan to raise?

 Different pathways allow you to raise different amounts of capital.



*There is no Federal offering limit on intrastate offerings but individual States and territories generally have offering limits between \$1 and \$5 million over a 12-month period. While registered offerings and IPOs do not require that an issuer raise a minimum amount, few issuers use registered offerings for proceeds under \$75 million.



What amount of money do you plan to raise?



Different pathways allow you to raise different amounts of capital.*



*None of the offering pathways include requirements for minimum amount of capital raised to qualify. However, market usage of the different offering types varies. Not shaded are areas where the amount sought by the issuer falls within the lower quartile (25%) of market usage of each offering pathway.



How do you plan to connect with potential investors?



Different rules apply depending on whether you are soliciting investors with whom you already have a pre-existing, substantive relationship, as well as if you plan to sell securities online.



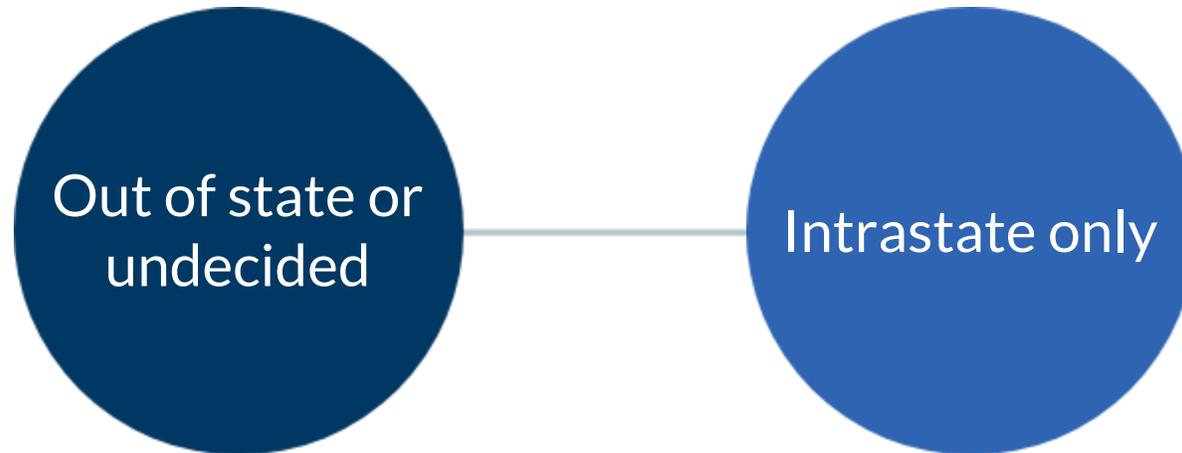
DID YOU KNOW? Some offering pathways, such as Rule 506(b), are not available if a company uses general solicitation to broadly market their offering.



Where are your potential investors located?



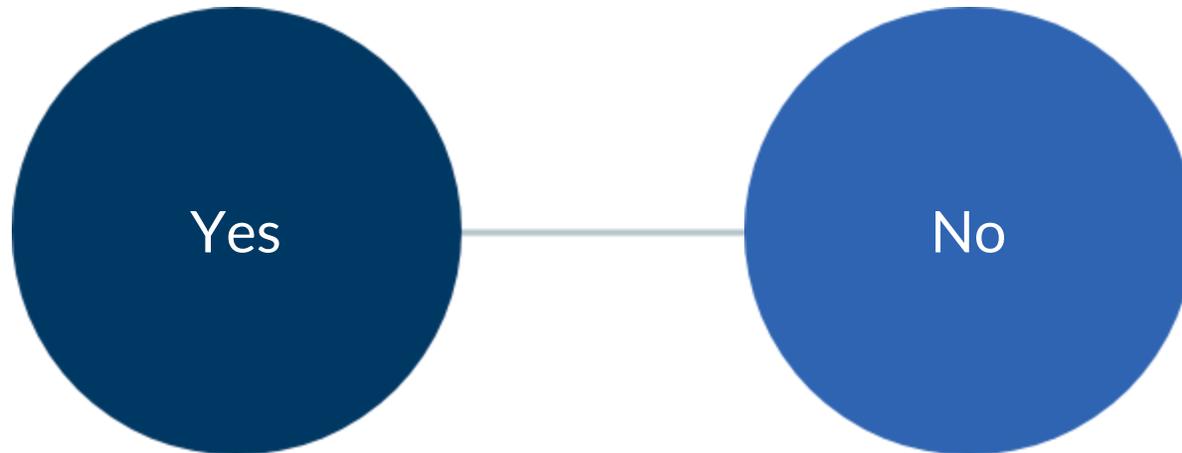
You may be able to raise capital from investors within your state or territory using an exemption for intrastate offerings.



Are all of your investors accredited?



Depending on what offering pathway you use, you may be limited in what types of investors can participate. The vast majority of capital raised by emerging companies is from accredited investors.



What is the role of accredited investors?

Many of the offering exemptions under the federal securities laws limit participation to [accredited investors](#) or contain restrictions on participation by non-accredited investors.

Only Accredited Investors Allowed	Restrictions for Non-Accredited Investors	No Restrictions for Non-Accredited Investors
 <ul style="list-style-type: none">• Rule 506(c) General Solicitation Offerings	 <ul style="list-style-type: none">• Rule 506(b) Private Placements• Regulation A Offerings• Regulation Crowdfunding	 <ul style="list-style-type: none">• Rule 504 Limited Offerings• Intrastate Offerings• Public Offerings



How can individuals qualify as accredited?

Individuals may qualify as accredited investors based on wealth and income thresholds, as well as other measures of financial sophistication.



Financial Criteria:

- Net worth over \$1 million, excluding primary residence (individually or with spouse or partner)
- Income over \$200,000 (individually) or \$300,000 (with spouse or partner) in each of the prior two years, and reasonably expects the same for the current year



Professional Criteria:

- Investment professionals in good standing holding the general securities representative license (Series 7), the investment adviser representative license (Series 65), or the private securities offerings representative license (Series 82)
- Directors, executive officers, or general partners (GP) of the company selling the securities (or of a GP of that company)
- Any “family client” of a “family office” that qualifies as an accredited investor
- For investments in a private fund, “knowledgeable employees” of the fund



How can entities qualify as accredited?



Entities owning investments in excess of \$5 million



The following entities with assets in excess of \$5 million: corporations, partnerships, LLCs, trusts, 501(c)(3) organizations, employee benefit plans, “family office” and any “family client” of that office



Entities where all equity owners are accredited investors



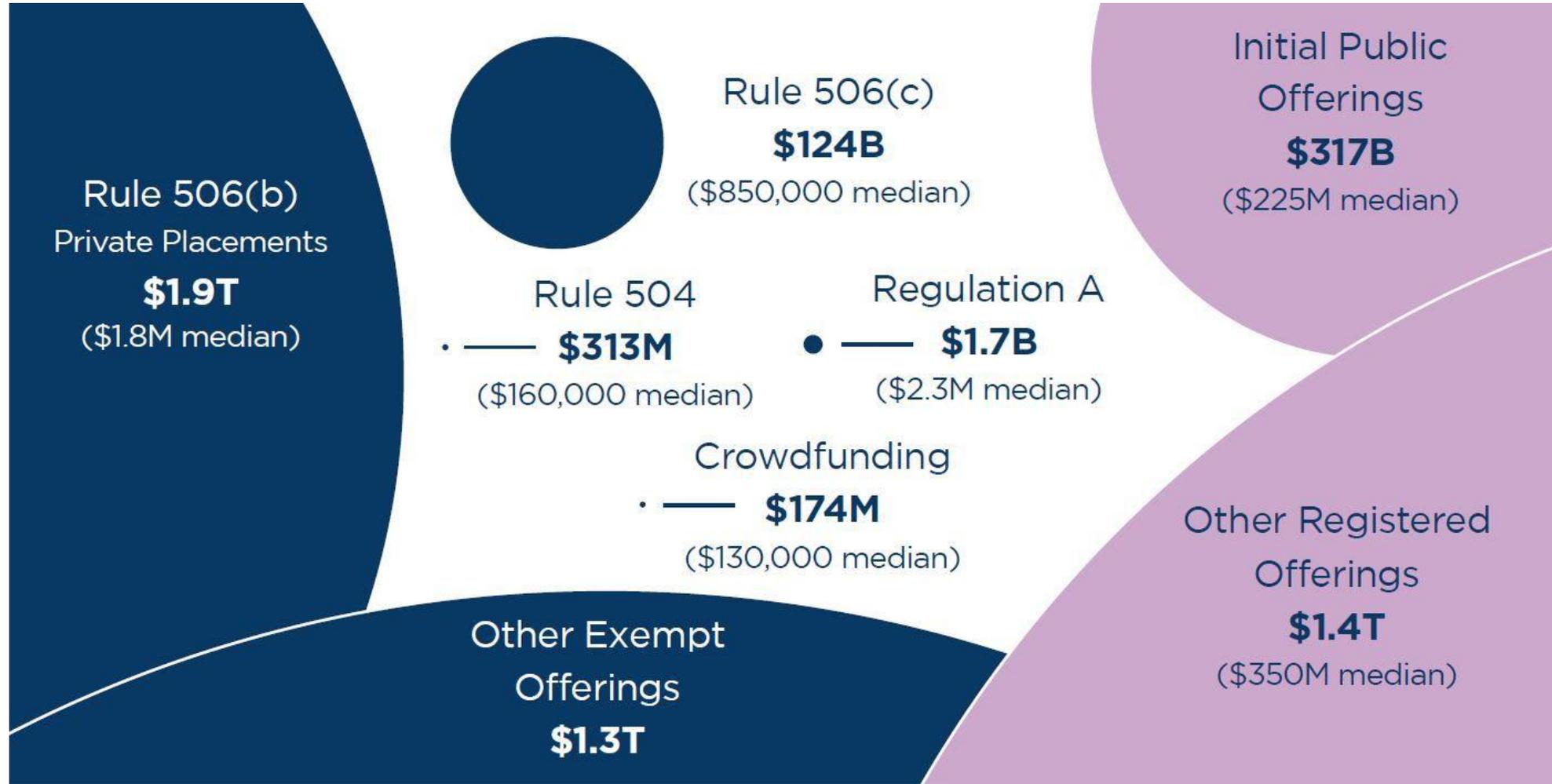
Investment advisers (SEC- or state-registered or exempt reporting advisers) and SEC-registered broker-dealers



A bank, savings and loan association, insurance company, registered investment company, business development company, or small business investment company or rural business investment company



How are the capital raising pathways being used?



How are the capital raising pathways being used?

How are different industries using the top 3 offering pathways to raise capital (excluding pooled funds)?



How are the capital raising pathways being used?

What is happening in Regulation Crowdfunding?

2020 was a record year for crowdfunding.



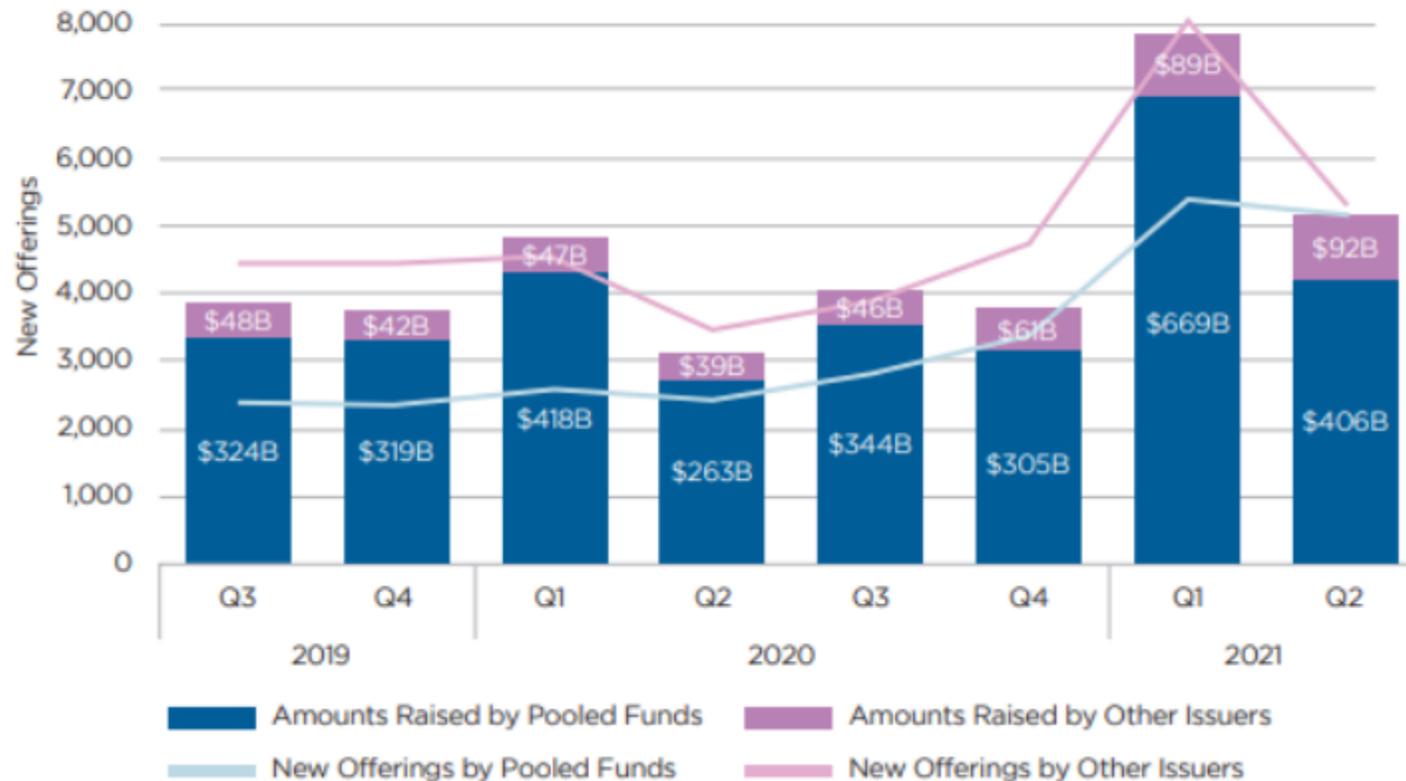
The number of crowdfunding offerings has increased over time.



How are the capital raising pathways being used?

What is happening with Regulation D offerings?

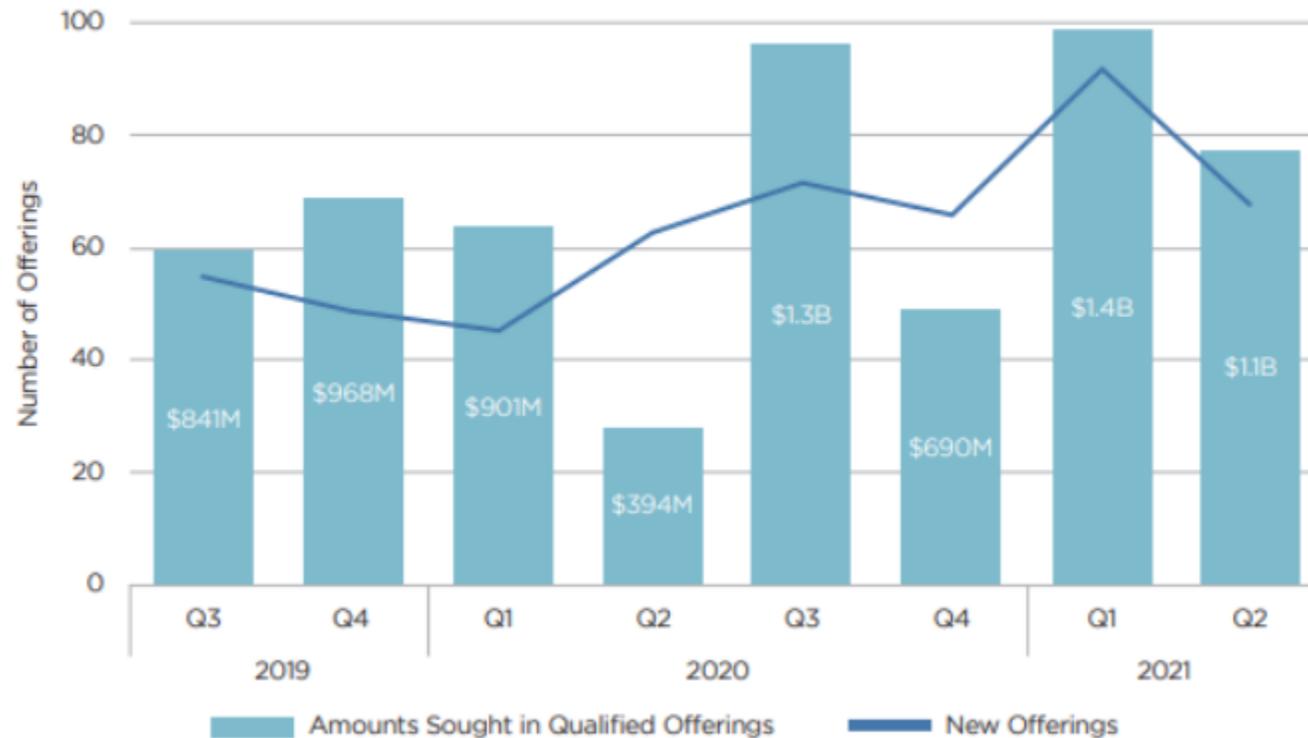
Pooled funds continue to be the dominant users of Regulation D.



How are the capital raising pathways being used?

What is happening with Regulation A offerings?

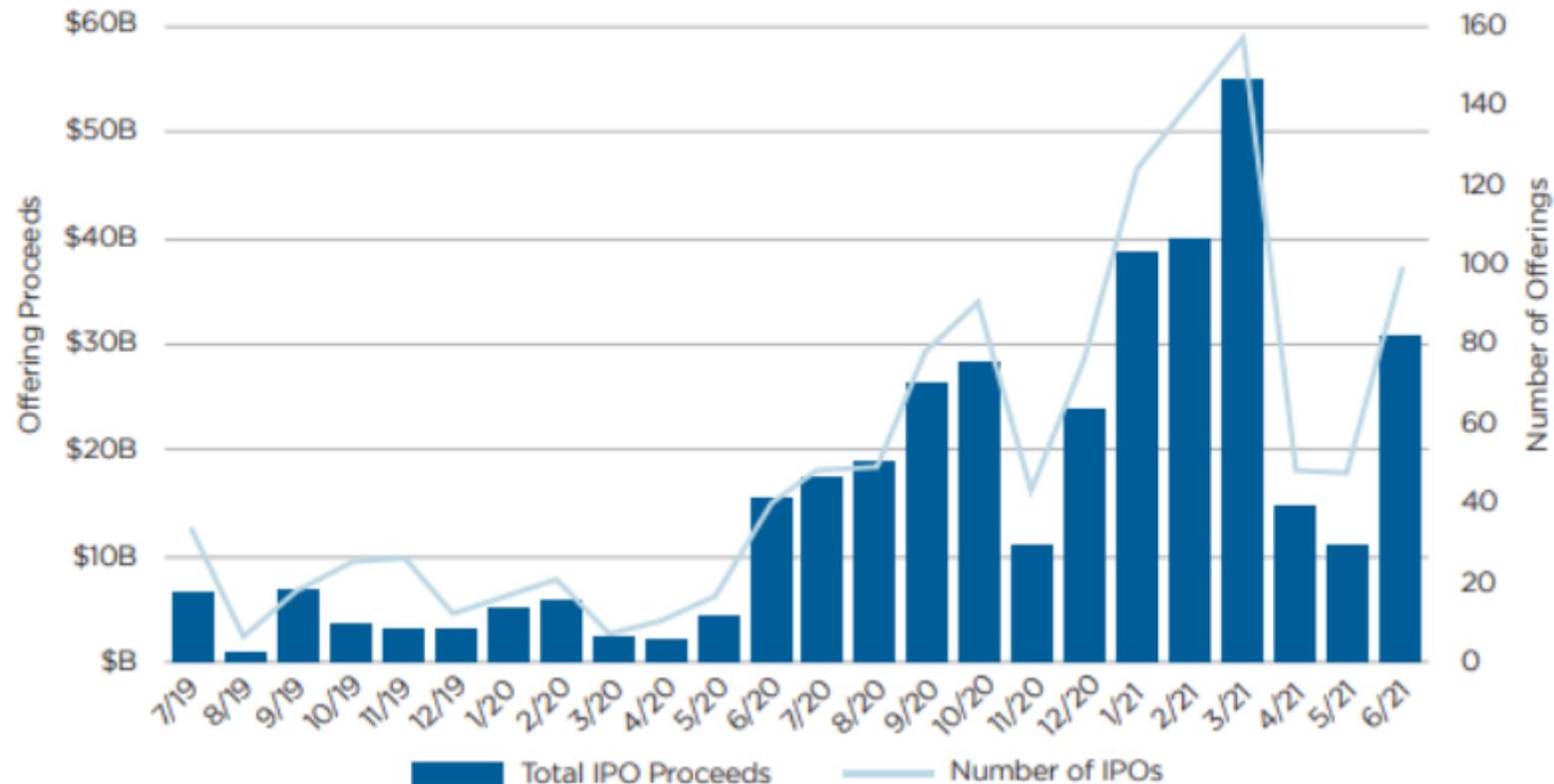
Though variable across quarters, the number of offerings and amounts sought have continued to climb.



How are the capital raising pathways being used?

What is happening with IPO activity?

2020 and the beginning of 2021 saw a marked increase in IPO activity.





NONCOMPLIANCE RISKS





What penalties or other consequences could the company face if it fails to comply with securities laws?



Civil or Criminal Lawsuit



Bad Actor Disqualification



Rescission



Future Investment Challenges





What penalties or other consequences could the company face?



Civil or Criminal Lawsuit

Companies and their leadership could face civil or criminal action brought by the federal or state government, depending on the nature of the violation, as well as civil liability from lawsuits brought by investors. This could include financial penalties or even incarceration, depending upon the type and severity of the offense.

[SEC enforcement](#) staff conducts investigations into possible violations of the federal securities laws, and litigates the Commission's civil enforcement proceedings in the federal courts and in administrative proceedings.





What penalties or other consequences could the company face?



Bad Actor Disqualification

Depending on the action, the company and certain individuals associated with the company may be subject to [“bad actor” disqualification](#), which would prohibit them from future capital raising using some of the most popular exemptions from registration, such as Rule 506(b) and Rule 506(c) of [Regulation D](#).





What penalties or other consequences could the company face?



Rescission

If a company does not comply with the registration requirements of the Securities Act, investors may have a right of rescission, which forces the company to return to investors their investment plus interest. In addition, a company in these circumstances could decide to make a rescission offer to investors. This may be particularly challenging for companies that have put the capital raised to use in operating the company.





What penalties or other consequences could the company face?



Future Investment Challenges

Failure to comply with the securities laws in earlier rounds of financing may cause potential investors to forgo investment to avoid involvement in a potential lawsuit or rescission offer, as highlighted above. Many sophisticated investors demand representations and warranties regarding past compliance with securities laws, an opinion letter from legal counsel, or other documentation of compliance as a condition of their investment.





OPEN-BOOK EXAM: FINDING RESOURCES





Resources and Tools

» LEARN MORE

www.sec.gov/capitalraising



Explore SEC resources to help equip small businesses, from startup to small cap, and their investors with the tools needed to navigate capital raising.

Getting Started: Understanding the Fundamentals



Navigate Your Options

Explore what regulatory pathways you could use to raise capital from investors.



Glossary of Terms

Cut through the jargon and learn the language of capital raising.



Building Blocks

Explore the fundamentals of capital raising.



Capital Raising Video Gallery

Check out these informational videos on the basics of capital raising.



Additional Resources

Find more tools for small businesses and their investors from the SEC and other agencies.





Resources and Tools

» LEARN MORE

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Navigating Your Options

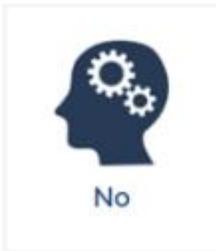
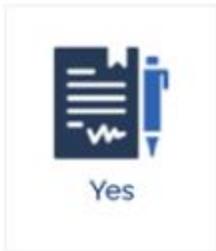
When raising capital, a business may not offer or sell [securities](#) unless the offering has been registered with the SEC or falls within an exemption from registration. Each exemption has specific requirements that a company must meet.

This interactive tool can help you navigate the many regulatory pathways to raise capital, based on the criteria that matter most to you. While this tool does not provide legal advice, it can help you better understand your options so that you make informed decisions. Let's get started!

1 of 8

Does your business already exist?

Have you formed your business under applicable state or territorial law and finalized organizational documents (such as bylaws or operating agreements)?



Fund(amental)s

Whether you are looking to a fund for financing or as an investment opportunity or you are forming your own fund, a familiarity with these commonly used terms will help guide your way.

3(c)(1) Fund

A 3(c)(1) fund is a *pooled investment vehicle* that is excluded from the definition of *investment company* in the *Investment Company Act* because it has no more than 100 beneficial owners (or, in the case of a *qualifying venture capital fund*, 250 beneficial owners) and otherwise meets criteria outlined in Section 3(c)(1) of the *Investment Company Act*.



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Resources and Tools

[>> LEARN MORE](#)

www.sec.gov/capitalraising

Explore the

BUILDING BLOCKS

of capital raising



Explore the fundamentals of capital raising with the [Office of the Advocate for Small Business Capital Formation](#).



What pathways are available to raise capital from investors?



What is the role of accredited investors?



What is general solicitation?



How do private funds provide capital to early-stage companies?





Resources and Tools

» LEARN MORE

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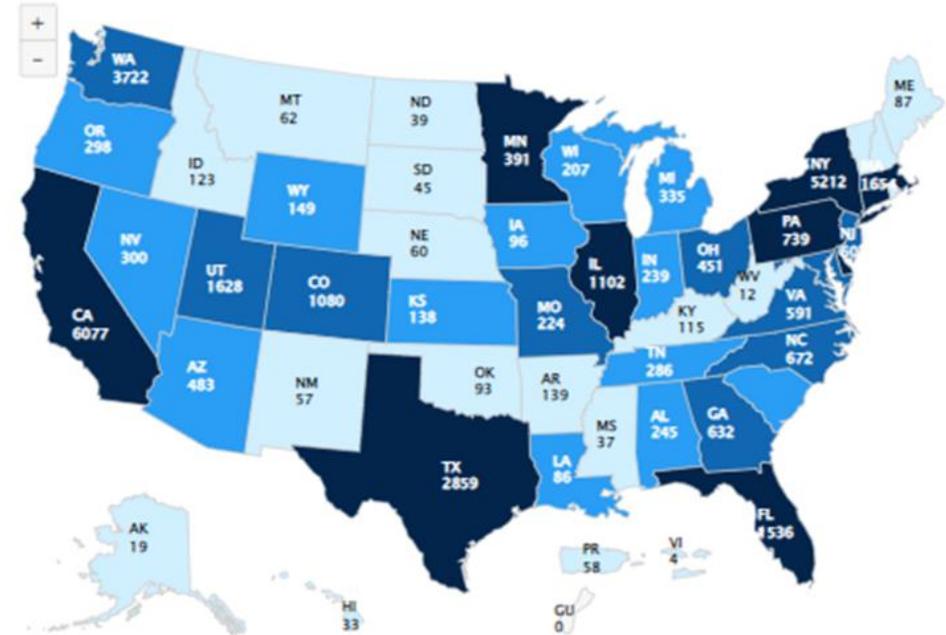
Capital Trends



Mapping Investment in America: Where are Companies Raising Capital?

Methodology

Regulation D



WHERE

States

HOW

Regulation D

WHEN

July 2020 to June 2021



ENGAGE WITH US



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